

## **REAL ESTATE CONTRACT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BRAZOS       §

THIS CONTRACT OF SALE is made by and between the **CITY OF COLLEGE STATION, TEXAS ("Seller")**, and **MONTANA MICROGROOVE ASSOCIATES**, a Texas General Partnership ("**Buyer**"), upon the terms and conditions set forth herein.

### **ARTICLE I PURCHASE AND SALE**

1.0     **Seller agrees to sell in fee simple by Special Warranty Deed a 0.761 acre tract of land known as part of Lot 1 consisting of 0.761 acres, Block 4, of the Anderson Ridge Subdivision, Phase Four, College Station, Brazos County, Texas** (hereinafter referred to as the "**Property**") attached hereto as Exhibit "A"), together with all and singular the rights and appurtenances pertaining to the Property, including all right, title and interest of **Seller** in and to adjacent roads, streets, alleys or rights-of-way; and **Buyer** agrees to purchase the Property for the consideration and subject to the terms, provisions, and conditions set forth herein. This Contract between **Seller** and **Buyer** to purchase the Property is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of **Seller's** representatives to this CONTRACT OF SALE.

1.1     **Conditions Precedent.** Seller's obligation to close the sale and sell hereunder is subject to the following conditions precedent:

i. **Buyer must secure PDD-B zoning for Lots 2 and 3 and the remainder of Lot 1, Block 4 of the Anderson Ridge Subdivision, Phase Four save and except the portion of Lot 1 conveyed by Buyer to the City of College Station for a water tower in a separate real estate contract dated September 12, 2000.**

ii. **Buyer must close and fund the sale and purchase and exchange of property described in a separate real estate sales contract between the City of College Station and Montana Microgroove Associates dated September 12, 2000.**

1.2     **Survey.** Buyer, at its expense, has ordered a survey of the Property showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey shall reflect any encroachments onto or by the Property onto adjoining properties. The field notes

description, as prepared by the surveyor, is attached to this Contract in Exhibit "A" and shall be used in the Special Warranty Deed.

1.3 Title Insurance. **Buyer** has requested University Title Company to furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the **Buyer** for **Buyer's** review together with legible copies of all instruments referred to in the Title Commitment. The **Buyer** shall request the title company to furnish these items to **Buyer** within fifteen (15) calendar days of the date of this Contract. **Buyer** shall have a period of seven (7) business days (the "Title Review Period") after receipt of the Title Commitment, the copies of the instruments referred to in Schedule B as exceptions, within which to notify Seller of **Buyer's** objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter to which **Buyer** does not object within the Title Review Period shall be deemed to be accepted by **Buyer**. If **Buyer** objects to any such Reviewable Matter and gives notice to Seller as provided herein, Seller may at its election, on or before closing, attempt to cure same. If Seller fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for **Buyer** to either (a) waive such objections and accept such title as Seller is able to convey or (b) terminate this Contract by written notice to the Title Company and to Seller, in which case neither Seller nor **Buyer** shall have any further rights or objections under this Contract.

1.4 Taxes. The parties agree that general real estate taxes on the Property for the then current year, shall be prorated as of the closing date and shall be adjusted in cash at the closing. **Buyer** alone shall be liable for any taxes and assessments assessed and levied for prior years resulting from any change in use subsequent to the conveyance to **Buyer** of the Property. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation.

1.5 The conveyance of the Property shall be made by Special Warranty Deed from Seller to **Buyer**.

## ARTICLE II PURCHASE PRICE

2.1 The parties to this contract agree that the purchase price of the Property is One Hundred Ninety Thousand Six Hundred Seven Dollars and 67/100 (\$190,607.67).

2.2 Earnest Money Deposit. Within two (2) business days after the execution of this contract by the Seller, Purchaser shall place the sum of \$2,000.00 (hereinafter referred to as the "Deposit"), together with a fully executed copy of this Contract, in escrow with University Title Company (hereinafter referred to as the "Title Company"). The Deposit shall be placed by the Title Company in an interest-bearing account and the interest earned on such account shall be

added to and constitute a part of the Deposit. If the Contract is consummated, the Deposit shall be applied against the total cash Purchase Price to be paid by Purchaser. In the event of a default by the Buyer, the deposit shall be paid to the Seller. In the event of a Permitted Termination (pursuant to Section 1.0, 1.1, 1.3 or 5.2 hereof), the Deposit shall be returned to Purchaser.

### **ARTICLE III WARRANTIES AND REPRESENTATIONS OF BUYER**

3.1 **Buyer** represents and warrants to **Seller** that the following statements are true. In the event that any of the following representations and warranties are not true on the date of closing, **Seller**, at **Seller's** option, shall have the right to terminate this Contract. In the event of such termination all Earnest Money shall be returned to **Seller** and thereafter no one will have any further obligations or liabilities under this Contract. **Buyer** shall certify to **Seller** at closing either (i) that all of such representations and warranties are true, or (ii) indicate which are not true as of the closing date.

(a) **Buyer** has the full right, power, and authority to enter into and perform its obligations under this Contract.

(b) As of the effective date, **Buyer** has been hereby advised in writing that **Buyer** should have an abstract covering the Property examined by an attorney of **Buyer's** own selection or that **Buyer** should be furnished with or obtain a policy of title insurance.

(c) **Buyer** is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., **Buyer** is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(d) **Buyer** agrees that the Property will be developed in conjunction with its site development to fulfill the terms and conditions of the Request for Bid #00-23 and its Economic Development Plan submitted thereto. Both the Request for Bid and Economic Development Plan and incorporated hereto by reference as if set out in full herein.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

4.1 **Seller** represents and warrants to **Buyer** as of the effective date and as of the closing date that:

(a) **Seller** has the full right, power, and authority to convey the PROPERTY to **Buyer** as provided in this Contract and to carry out **Seller's** obligations under this Contract, and all requisite action necessary to authorize **Seller** to enter into this Contract and to carry out **Seller's** obligations hereunder has been or on or before closing will have been taken.

(b) Seller is not subject to any legal or administrative proceeding, debt structure or other agreement which would prevent Seller's full and timely performance of its obligations hereunder.

#### 4.2 DISCLAIMER OF WARRANTIES

**SELLER MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONDITION OR ENVIRONMENTAL STATE OF THE PROPERTY. THE PROPERTY IS SOLD AS IS AND WITH ALL FAULTS. WITHOUT LIMITING SELLER'S OBLIGATION TO DELIVER A DEED WITH SPECIAL WARRANTY OF TITLE ON THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT, SELLER MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE SPECIAL WARRANTY DEED.**

## ARTICLE IV CLOSING

4.1 The closing for the sale of the Property shall take place immediately following the closing on the Real Estate Contract dated September 12, 2000 between the City of College Station and Montana Microgroove Associates and shall be held at University Title Company, 1021 University Drive East, College Station, Brazos County, Texas, 77840, within forty-five (45) calendar days from the date that the property is rezoned by **Buyer**, at such time and date as **Seller** and **Buyer** may agree upon the closing date."

4.2 At the closing, **Seller** shall:

- i. Deliver to **Buyer** a duly executed and acknowledged Special Warranty Deed conveying good and indefeasible title in fee simple to all of the Property, free and clear of any and all liens, encumbrances.
- ii. Pay the Seller's expenses and attorney fees.
- iii. Pay the cost to prepare the Special Warranty Deed
- iv. Pay the cost of issuance of any tax certificate
- v. Pay one-half (1/2) of the escrow fees.
- vi. Deliver possession of the Property to **Buyer**.
- vii. Pay any and all required property taxes on the Property.

4.3 Upon such performance by **Seller** at closing, **Buyer** shall:

- (a) Pay the balance of the purchase price and the below-listed closing costs.
  - i. Pay for Buyer's title policy on the Property
  - ii. Pay one-half (1/2) of the escrow fees.
  - iii. Pay the costs to obtain, deliver and record all documents other than those to be recorded at Seller's expense.
  - iv. Pay the Buyer's expenses or attorney fees.

## ARTICLE V SPECIAL CONDITIONS

5.1 The parties herein agree that part of the consideration for this contract is the **Buyer's** performance of its obligations contained in its Economic Development Plan as submitted by the **Buyer**.

5.2 As a condition of this sale **Buyer** agrees to grant to **Seller** at the time of closing a temporary construction easement on the Property as described by metes and bounds contained in Exhibit "A". **Seller** shall not be obligated to deliver the deed until the temporary construction

easement is executed. If Buyer and Seller cannot agree on the form of the temporary construction easement, this contract shall terminate and neither party shall have any further obligation to the other. Such event shall constitute a permitted termination and Buyer shall be entitled to a refund of its earnest money.

5.3 As part of the consideration for the sale of the Property, Buyer agrees to grant Seller a permanent access easement on, over and across Lot 1R, Block 4, Anderson Ridge Subdivision, Phase Four to access Seller's water tower site. The access to Seller's water tower site from Lot 1R, Block 4 will be generally along the western edge of the northern boundary of Buyer's property. The access easement shall be noted and depicted on the final replat of Lots 1 - 4, Block 4, Anderson Ridge Subdivision, Phase Four.

## **ARTICLE VI MISCELLANEOUS**

6.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

6.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the addresses set forth below:

**Seller:** City of College Station  
1101 Texas Avenue  
College Station, Texas 77840

**Buyer:** James H. Hughes, General Partner  
Montana Microgroove Associates  
110 Lincoln Avenue  
College Station, Texas 77840

6.3 Texas Law to Apply: This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Contract are to be performed in Brazos County, Texas.

6.4 Parties Bound: This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns. The persons executing this Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

6.5 Legal Construction: In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract.

6.6 Prior Agreements Superseded: This Contract constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting subject matter within.

6.7 Time of Essence: Time is of the essence to this Contract.

6.8 Gender: Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

6.9 Memorandum of Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**Buyer:**

**Seller:**

MONTANA MICROGROOVE ASSOCIATES

CITY OF COLLEGE STATION

BY: \_\_\_\_\_

  
JAMES H. HUGHES, General Partner

BY: \_\_\_\_\_

LYNN McILHANEY, Mayor

ATTEST:

\_\_\_\_\_  
CONNIE HOOKS, City Secretary

APPROVED:

\_\_\_\_\_  
Thomas E. Brymer, City Manager

Roxanne Hemick  
City Attorney

Charles Cryan, Director of Fiscal Services

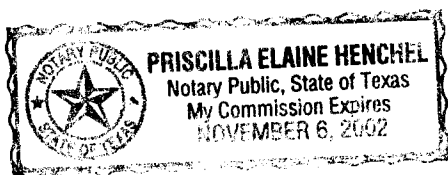
THE STATE OF TEXAS      \*  
                                     \*      ACKNOWLEDGMENT  
COUNTY OF BRAZOS      \*

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
by Lynn McIlhaney as Mayor of the City of College Station, a Texas Municipal Corporation, on  
behalf of said corporation.

NOTARY PUBLIC in and for the  
STATE OF TEXAS

THE STATE OF TEXAS      \*  
                                     \*      ACKNOWLEDGMENT  
COUNTY OF BRAZOS      \*

This instrument was acknowledged before me on the 31<sup>st</sup> day of January, 2001,  
by James H. Hughes, General Partner of Montana Microgroove Associates, a Texas General  
Partnership, on its behalf.



Priscilla Elaine Henchel  
NOTARY PUBLIC in and for the  
STATE OF TEXAS



EXHIBIT "A"

**METES AND BOUNDS DESCRIPTION  
OF A  
0.761 ACRE TRACT  
PORTION OF LOT 1, BLOCK 4  
ANDERSON RIDGE SUBDIVISION, PHASE FOUR  
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF LOT 1, BLOCK 4, ANDERSON RIDGE SUBDIVISION, PHASE FOUR, ACCORDING TO THE PLAT RECORDED IN VOLUME 795, PAGE 257 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** AT A 5/8 INCH IRON ROD FOUND ON THE NORTH RIGHT-OF-WAY LINE OF HOLLEMAN DRIVE (60' R.O.W.) MARKING THE SOUTH CORNER OF SAID LOT 1 AND THE EAST CORNER OF A CALLED TRACT OF LAND DESCRIBED AS TWO TRACTS BY A DEED TO PETER E. PRITCHARD RECORDED IN VOLUME 1059, PAGE 790 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, SAID PRITCHARD TRACT BEING COMMONLY KNOWN AS "VIKING APARTMENTS";

**THENCE:** N 40° 35' 22" W ALONG THE COMMON LINE OF SAID LOT 1 AND VIKING APARTMENTS FOR A DISTANCE OF 323.65 FEET TO A POINT MARKING THE WEST CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A 1/2 INCH IRON ROD FOUND ON THE SOUTH RIGHT-OF-WAY LINE OF PARK PLACE (40' R.O.W.) MARKING THE WEST CORNER OF SAID LOT 1 BEARS: N 40° 35' 22" W FOR A DISTANCE OF 276.09 FEET (THIS LINE WAS USED FOR BEARING ORIENTATION HONORING THE PLAT CALL BEARING OF ANDERSON RIDGE SUBDIVISION, PHASE FOUR, 795/257);

**THENCE:** N 49° 24' 38" E THROUGH SAID LOT 1 FOR A DISTANCE OF 153.70 FEET TO A POINT MARKING THE NORTH CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE SOUTH LINE OF PARK PLACE BEARS: N 22° 17' 18" W FOR A DISTANCE OF 209.26 FEET;

**THENCE:** S 22° 17' 18" E CONTINUING THROUGH SAID LOT 1 FOR A DISTANCE OF 260.43 FET TO A 5/8 INCH IRON ROD FOUND MARKING AN ANGLE POINT IN THE EAST LINE OF THIS HEREIN DESCRIBED TRACT;

**THENCE:** S 38° 07' 43" E CONTINUING THROUGH SAID LOT 1 FOR A DISTANCE OF 75.07 FEET TO A 5/8 INCH IRON ROD FOUND ON THE NORTH LINE OF HOLLEMAN DRIVE, SAID IRON ROD FOUND BEING IN A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 543.30 FEET;

**THENCE:** ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15' 03" FOR AN ARC DISTANCE OF 68.76 FEET (CHORD BEARS: S 48° 14' 45" W - 68.71) TO THE POINT OF BEGINNING CONTAINING 0.761 OF AN ACRE OF LAND, MORE OR LESS.

